

No. 14/13/87-6Lab./193.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman Shri Paramjit and the management of M/s Secretary, H.S.E.B., Panchkula.

IN THE COURT OF SHRI P. L. KHANDUA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 269 of 1992

between

SHRI PARAMJIT, C/O BHARTIYA MAZDOOR SANGH, G.T. ROAD, PANIPAT. *Workman*

and

THE MANAGEMENT OF (1) SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH, (2) EXECUTIVE ENGINEER (SI) CONSTRUCTION DIVISION, HARYANA STATE ELECTRICITY BOARD, KARNAL *Management*

Present :

Shri Karan Singh, A.R., for the workman.

Shri S. S. Sirohi, L.O., for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Notification No. 3/25/90-3 Lab., dated 29th October, 1991 :—

Whether the termination of services of Shri Paramjit Singh is justified and in order ? If not, to what relief he is entitled ?

2. Both the workman and the management were summoned. The workman filed the demand notice that he worked in the office of Executive Engineer, Construction Division, H.S.E.B., Karnal w.e.f. 1st January, 1981 to 31st August, 1983 but the Executive Engineer issued notice regarding termination of services on 11th July, 1983. The other workers are still in work and should have been taken on the job and the department has not given the Bonus and service compensation by the Executive Engineer and the respondent had started taking work from new workers and from the contractors and hence he be reinstated with continuity of service and full back wages.

3. The respondent has filed the written reply that the reference is bad in law ; the reference is bad on account of delay and laches ; the applicant was appointed on daily wages as labourer in January, 1983 and he was paid according to the number of days he worked in a month. Petitioner was given one month notice and he was asked to collect the retrenchment compensation but the petitioner did not collect the same to the reasons best known to him. No junior person to him has been taken in the Board's service after the service of the petitioner were terminated and the provisions of Section 25-F has been followed before terminating the service of the workman and therefore, the claim petition be dismissed with costs.

4. The replication was filed. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the impugned termination of services of the workman is invalid ?
- (2) Whether the reference is bad due to laches ?
- (3) Relief ?

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1 and 2 :

6. Both these issues are decided together because the question involved in both the issues is same.

7. The workman has come into witness box as WW-1 and closed the evidence. The management has examined Shri Rameshwar Dass Gupta as MW-1 and closed his evidence.

8. It is proved that the workman had worked for about 735 days and he has worked for more than 240 days in a year. The question arises for determination by me is whether any retrenchment compensation was paid to the workman or not before retrenching him. The workman has made statement that he had worked for 735 days. The workman has made statement that he was posted on 1st January, 1981. Ex-W-1 is certificate of service showing that he had served for more than 240 days in a year. Ex-W-2 is the order given by the Executive Engineer, S.I. Construction, H.S.E.B., Karnal to the applicant retrenching him w.e.f. 31st August, 1983. As such it is proved that the workman had served the department for more than 240 days in a year and his services were retrenched. Ex-W-3 is the photostat copy of Award given by Shri S. B. Ahuja, Presiding Officer, Industrial Tribunal, Haryana, Faridabad which is placed on the file. Ex-A-2 is the order passed by the Hon'ble High Court in Civil Writ Petition filed by Jasbir Singh against the H.S.E.B. etc. and admitting their case. The workman is not one of the writ petitioner but the principle laid down in the copy of order Ex-A-2 is fully applicable to the workman.

9. The contention made by the learned A.R. for the workman is that as laid down in Section 25-F of the I.D. Act and which is that where any workman is retrenched, and the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity in (to the retrenched workman who are citizen of India to offer themselves for re-employment and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons. Section 25-N of the I.D. Act is that (1) No workman employed in any industrial establishment to which this chapter applies who has been in continuous service for not less than one year employee shall not be retrenched by that employer until—(a) the workman has been given three month's notice (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official gazette (hereinafter in this Section referred to as the specified authority) has been obtained on an application made in this behalf. (2) XX XX XX (3) Whereas application for permission under sub-section (1) has been made, the appropriate Government on the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

10. I have gone through all the sections 25-H & N that of the present dispute section 25-H is fully applicable which required that the employer and the other workers after the retrenchment of the workman, the workman is entitled to be heard and if the management finds him fit for the job, the management is bound to employ him.

11. It is proved that the workman had worked for more than 240 days in a year and he had been retrenched and the retrenchment if not found to be in accordance with law he is liable to be reinstated and for this reference reliance is made to Chandrama Singh *versus* Managing Director, U.P. Co-op., Union, Lucknow and others cited in 1982 LLR 137 holding that where a complete machinery/remedy for obtaining relief is provided in statute and such machinery/remedy fully covers the grievance of the petitioner then, unless extraordinary or exceptional circumstances exist or the machinery/remedy does not cover the grievance of the petitioner or the machinery or remedy is demonstrated and proved by the petitioner to be inadequate or ineffectual, the petitioner has to be relegated to the alternative remedy and the Court should not entertain a writ petition under Article 226 of the Constitution of India for redressal of the grievance of the petitioner.

12. The question arises for determination is whether the workman has served for more than 240 days in a year or not. The workman has made statement that he had served and was appointed in the year 1981 and he was resumed from the job by the middle of 1983 and thus it is proved that the workman has worked for more than 240 days in a year in the department. The contention made by the learned A.R. for the respondent/management is that the department had paid one month pay to the workman but no notice or retrenchment compensation etc. have been paid to comply with the mandate of Section 25 of the I.D. Act and the mandate is not complied with and the termination of workman can be held to be illegal and can not stand.

13. The next contention of the learned A.R. for the workman is that closure of the company is required under Section 25-O of the I.D. Act, and information of closure is to be sent to the Govt., but it is proved that no intimation was sent to the Govt. and hence closure at all can not be considered legal. I have gone through the statement of MW-2, I do not find that if information was sent to the Govt. for closure of the unit and hence I am of the view that the Section 25-O is fully applicable and have not been complied with.

14. Now the question arises whether any other workman was appointed after the retrenchment of the workman in question or not. The workman has made statement that Jashwant Singh Xen had appointed some other person after his removal on the job but he could not tell any name of person. MW-1 Rameshwar Dass Gupta made the Statement that no new person was appointed after termination of services of the workman. It is true that Rameshwar Dass Gupta has not been suggested but it is also proved that Hon'ble High Court had ordered for the appointment of seven persons and as ordered by my learned predecessor in the Award which was published in the official gazette. The learned L.O. for the management submitted that who so ever was ordered by the High Court has been appointed. When the management is appointing other

person I am not going to believe the plea that no other person was appointed after the workman was retrenched. When the workman is proved to have worked for more than 240 days in his service and services has not been retrenched in accordance with the Section 25-F of the I.D. Act, the termination can be said to be illegal and for which reason I do not agree with the submission that the termination of service was made in the legal manner. (The learned A.R. for the workman has referred Ex. WW-2/1 showing that 37 persons were ordered to be reinstated by the Hon'ble High Court and Mr. S. B. Ahuja, the learned Presiding Officer has reinstated the 7 persons (keeping in view all the circumstances the workman is entitled to be reinstated and I decide the Issue No. 1 in favour of the workman and Issue No. 2 against the management.

Issue No. 3 (Relief) :

15 In view of my finding the above issues I hold that the workman is entitled to be reinstated with continuity of service and 50% back wages. The reference is answered and returned accordingly, with no orders as to costs

The 31st March, 1994.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court
Rohtak.

Endorsement No. 1040, dated 18th April, 1994.

A copy is forwarded to the following :—

- 1 Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer, Karnal.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab./194.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of Secretary, HSEB, Panchkula versus Ram Sarup :—

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 284 of 1992.

between

SHRI RAM SARUP, C/O PRESIDENT, BHARTIYA MAZDOOR SANGH, G.T. ROAD, PANIPAT,
—Workman

AND

THE MANAGEMENT OF (1) THE SECRETARY, HARYANA STATE ELECTRICITY BOARD,
SECTOR-6, PANCHKULA, DISTRICT AMBALA, (2) EXECUTIVE ENGINEER S.I.C. DIVISION,
HARYANA STATE ELECTRICITY BOARD, KUNJPURA ROAD, KARNAL.

Present :

None for the parties.

AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication—*vide* Labour Deptt. Notification No. 3/25/90-3Lab., dated 29th October, 1991:—

Whether the termination of services of Ram Sarup is justified and in order? If not, what relief he is entitled?

2. The case was called several times but no one appeared on behalf of the parties. It appears that the parties are not interested in their case and hence the reference is dismissed in default, with no orders as to costs.

P. L. KHANDUJA,

Dated:
The 19th April, 1994.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsment No. 1117, dated 28th April, 1994.

A copy is forwarded to the following:—

- (1) Labour Commissioner, Haryana, Chandigarh.
- (2) Labour Officer, Karnal.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab./195.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman Shri Pala Ram and the management of M/s Secretary, HSEB, Panchkula.

**IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK**

Reference No 585 of 1992

Between

**SHRI PALA RAM, SON OF SHRI PHOOL SINGH, C/O PRESIDENT, BHARTIYA MAZDOOR
SANGH, G.T. ROAD, PANIPAT** —Workman

AND

**THE MANAGEMENT OF M/S (1) SECRETARY, HARYANA STATE ELECTRICITY BOARD,
SECTOR-6, PANCHKULA (AMBALA). (2) THE EXECUTIVE ENGINEER, S.I.C. DIVISION,
HARYANA STATE ELECTRICITY BOARD, KUNJPURA ROAD, KARNAL.** —Management

Present :

Shri Ajay Singh, A.R., for the workman.
Shri S.S. Sirohi, L.O., for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication—*vide* Labour Department Notification No. 3/25/90-3Lab., dated 29th October, 1991:—

Whether the termination/retrenchment of Shri Pala Ram is justified and in order? If not, to what relief he is entitled?

2. On summoning the workman appeared and filed the demand notice under Section 2-A to the effect that he was working with the respondent/management since 1st June, 1981 as T-mate on the pay of Rs. 400 but the management retrenched him without giving any retrenchment compensation, without notice, notice pay and hence the order dated 20th July, 1983 regarding retrenchment is illegal and liable to be set aside.

3. The management has filed the written statement that the reference is bad in law; that the applicant was causal worker and the Industrial Disputes Act is not applicable to him; the reference is bad on account of laches and delay; that the writ petition of the applicant has been dismissed by the Hon'ble Supreme Court

as such the present petition is not maintainable; the petitioner was engaged on daily wages as causal labour in June, 1981 and was paid according to the number of days worked in a month upto 31st August 1983 ; the services of the petitioner was not required on account of non-availability of material and completion of work on which he was employed by the management; as the petitioner can not be engaged due to blanket ban on recruitment and non-availability of work.

4. Replication was filed. On the pleadings of the parties, the following issues are framed:—

- (1) Whether the impugned termination of services of workman is invalid? OPW.
- (2) Whether the reference is not maintainable as alleged in preliminary objections of the written statement?
- (3) Relief?

5. My findings on the above issues with reasons thereof are as under:—

Issue No. 1:

6. The workman has come into witness box as WW-1 and closed the evidence. The management has examined Shri Rameshwar Dass, U.D.C. O/O Xen. Sub Urban Division No. 2, H.S.E.B. Karnal and closed the evidence.

7. It is proved that the workman has served for more than 240 days in a year with the management. The management accept the plea of the workman that he had served for more than 240 days. The management admits that the management while retrieving the workman has not been paid any compensation, as required under Section 25-F of the Industrial Disputes Act. Section 25-F of the Industrial Disputes Act is mandatory provision that the management can not relieve any person who has served 240 days in a year unless she is given any notice, notice pay and retrenchment compensation, but the management has not done so. When the workman had served for more than 240 days he is being removed from the job without compliance of Section 25-F of the Industrial Disputes Act. I am of the view that the workman could not be relieved from the job without compliance of Section 25-F of the Act.

8. The management admitted the plea that the workman was given retrenchment compensation on 9th September, 1983 after giving him notice, notice pay but he refused to accept. Shri Rameshwar Dass, MW-1 made statement that the certain workers had gone to Court and after Court order they were reinstated.

9. Ex. MW-2/1 is retrenchment of daily wages and which contained the name of the workman/applicant. Ex MW-1/1 is the retrenchment notice of the workman/applicant. The workman has taken plea that he wants to keep lein and he do not want compensation and he may be called back as and when the work/material comes to your division. Ex. WX is the Award given by Shri S.B. Ahuja the then Presiding Officer, Industrial Tribunal, Haryana, Faridabad, reinstating the severral workers of the management, like it Mr. V.P. Choudhary Presiding Officer, Labour Court, Ambala has given the Award in favour of Inderaj, workman.

10. For the above said reasons as the workman had not accepted the retrenchment compensation and notice, notice pay and he accepted the retrenchment compensation under protest. It is true that he served notice, notice pay thus the management has not complied with the Section 25-F of the I.D. Act and I can hold that the retrenchment of the workman took place illegally and I set aside the retrenchment order and I decided this issue in favour of the workman.

Issue No. 2:

11. This petition has been filed after six years of delay and the dely is not explained. It is not accordingly opportunity of law that the delay is not justified and that delay can not be condoned. It is of course true that there is no limitation prescribed in the I.D. Act. It is general principal laid down in limitation Act the petition filed ater six years that petition is time barred. The other pleas has been taken by learned A.R. for the management that since the writ petition has been dismissed by the Supreme Court as such the present petition is not maintainable. Though decision given by the Hon'ble Supreme Court can not to be held applicable because the applicant has filed the writ petition for not terminating him but the applicant had filed this reference to reinstatement on job. But the fact is that as the applicant has gone to Supreme Court. The learned A.R. for the management has referred 1994 (94-1) P.L.R. 354. From he above said reasons I decide this issue in favour of the management and against the workman.

Issue No. 3 (Relief) :

12. In view of my findings on the above issues I hold that the workman is not entitled to any relief. The reference is answered and returned accordingly, with on orders as to costs.

Dated:
The 8th April, 1994.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement. No. 1058, dated the 18th April, 1994.

A copy, is forwarded, to the following :—

1. Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer, Karnal.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13)87-6Lab./196.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Secretary, H.S.E.B., Panchkula *versus* Sh. Ved Singh.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 261 of 1992

between

SHRI VED SINGH C/O SHRI RAM SARUP LAKRA, INTUC BHAWAN, MODEL TOWN, SONEPAT .. *Workman.*

and

M/S (1) SECRETARY, H.S.E.B., CHANDIGARH, (2) XEN (S.I.) CONSTRUCTION DIVISION, H.S.E.B., KARNAL .. *Management.*

Present :

Shri Karan Singh, A.R., for the workman.

Shri S. S. Sirohi, L.O., for the management.

AWARD

In Exercise of powers conferred by Sub-Clause (c) of Sub Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide Labour Department Notification No.3/25/90-3Lab.*, dated 29th October, 1991 :—

Whether the termination of services of Shri Ved Singh is justified ad in order? If not, to what relief he is entitled?

2. After receipt of the order of reference usual notices were issued to the parties. The workman appeared and filed his statement of claim that he was posted as daily wages work for coal handling M.T.C. Division at P.T.P.S. Assan with effect from 1st July, 1980 and on 1st July, 1982 the workman was removed from the job, but the juniors persons were also posted and new persons were also appointed after termination of the workman but the workman was not taken on duty and hence this claim petition is filed for reinstatement with continuity of service and full back wages.

3. Reply to the claim statement is filed by the respondent that the reference is "bad" in law; the reference is bad on account of latches and delay; the petition was appointed on D/W as Labourer in March, 1981 and he was paid accordingly to the number of days worked in the month the petitioner was given one month notice and he was also asked for collect the retrenchment compensation but the petitioner did not collect the same to the reasons best known to him. Both the junior to him were terminated. The provisions of Section 25-F has been complied with before terminating the services of the petitioner and the petition of the workman be dismissed.

4. Replication was not filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the impugned termination/retrenchment was invalid ? OPW.
- (2) Whether the reference is bad in law ? OPM.
- (3) Whether the reference is bad due to latches ?OPM.
- (4) Relief ?

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1:

6. The workman come into witness box as WW-1 and made statement in support of his case and closed the evidence. The management has examined Kuljinder Singh, J.E. as MW-1 and closed the evidence.

7. Shri Kuljinder Singh MW-1 has made the statement that the workman had never worked in Coal Handling Division No. 1 Power Thermal. He also could not tell whether the certificate which is Mark 'A' is signed by J.E. or not. WW-1 Ved Singh has made statement that he was appointed as workers on 1st June, 1982 at the rate of Rs. 240 P.M. but he was terminated without payment of any notice and retrenchment compensation and notice pay etc. He also made statement that after his termination the management had employed new persons. Suggestion is made to him that he was given retrenchment notice. He was also asked to have retrenchment compensation from the office. It is thus proved that the workman had worked in the respondent department but J.E. of the respondent department made statement that workman had never asked in the respondent department. It is clearly proved that the J. E. is making wrong statement. The workman has produced Mar. 'A' certificate issued by the XEN. Showing that the workman had worked for 575 days in the respondent department. Though it is not exhibited. When the workman has produced only photostat copy and the management does not admit it is issued by the XEN. The workman has not Proved the signature by the particular XEN but which the workman had not done so. I as such hold that putting it as Mark 'A'. is correct. It is proved from the statement of the WW-1 and from cross-examination by management that he was employed and he had received the retrenchment compensation. It is also proved that as the management had not put to him that he had not served the department from 1st July, 1980 to 1st June, 1982 as given by the workman in his statement. It is proved that as the workman has served from 1st July, 1980 to 1st June, 1982 at the rate of Rs. 240 P.M. and he has served for more than 240 days in a year. The services of the workman were retrenched not according to law as laid down in Section 25-F of the I.D. Act. Hence I decide this issue in favour of the workman and against the management.

Issues No. 2/3:

8. Both these issues are not pressed or argued by the parties. Hence I decide both these issues against the management.

Issue No. 4 (Relief):

9. In view of my findings on the above issues I hold that the workman is entitled to be reinstated with continuity of service but back wages @ Rs. 50%. The reference is answered and returned accordingly with no orders as to costs.

P. L. KHANDUJA,

Dated :
The 26th May, 1994.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endstt. No. 1348, dated the 27th May, 1994

A copy is forwarded to the following :—

1. Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer, Karnal.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.